



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
 REGION 5  
 77 WEST JACKSON BOULEVARD CHICAGO,  
 IL 60604-3590

September 9, 2021

REPLY TO THE ATTENTION OF:

**S-6J**

**VIA FEDERAL EXPRESS/OVERNIGHT DELIVERY**  
**SIGNATURE REQUIRED**

Superior Battery, Inc.  
 c/o Joel F. Handler, Esq.  
 One East Wacker Drive, Suite 510  
 Chicago, Illinois 60601

Re: Morris Lithium Battery Fire Site  
 East Street and Benton Street, Morris, Grundy County, Illinois  
 Site/Spill Identifier (SSID): C5TN  
 Administrative Settlement Agreement and Order on Consent (ASAOC)

Dear Mr. Handler:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent (ASAOC) issued for this Site pursuant to Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this ASAOC, please contact Jamie Getz, Associate Regional Counsel, at (312) 886-2287 or [getz.jamie@epa.gov](mailto:getz.jamie@epa.gov), or Leonard Zintak, On-Scene Coordinator, at (312) 886-4246 or [zintak.leonard@epa.gov](mailto:zintak.leonard@epa.gov).

Sincerely,

X 

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Douglas Ballotti, Director  
 Superfund & Emergency Management Division  
 Signed by: DOUGLAS BALLOTTI

Enclosure

cc: Ms. Heather Nifong  
 Illinois Environmental Protection Agency

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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IN THE MATTER OF:

**Morris Lithium Battery Fire Site**  
**Morris, Grundy County, Illinois**

**Superior Battery Inc.,**

Respondent

Proceeding Under Sections 104, 106(a),  
107 and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, 42 U.S.C. §§ 9604,  
9606(a), 9607 and 9622

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CERCLA Docket No. V-W-21-C-009

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTIONS**

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (EPA), and Superior Battery Inc. (“Respondent”). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the “Morris Lithium Battery Fire Site” generally located at the intersection of East Street and Benton Street, Morris, Grundy County, Illinois (the “Site”).

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 5 to the Director of the Superfund and Emergency Management Division, EPA Region 5 by Regional Delegations 14-14A, 14-14C, and 14-14D.

3. EPA has notified the State of Illinois (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that they will not contest the basis or validity of this Settlement or its terms.

## **II. PARTIES BOUND**

5. This Settlement is binding upon EPA and upon Respondent and their successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent’s responsibilities under this Settlement.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

7. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or their

contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

### **III. DEFINITIONS**

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Action Memorandum” shall mean the EPA Action Memorandum relating to the Site signed on July 23, 2021, by the Director, Superfund and Emergency Management Division, EPA Region 5, and all attachments thereto. The “Action Memorandum” is attached as Appendix A.

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action, including residential areas in the vicinity of the property.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“IEPA” shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not

limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 87 (Work Takeover), Paragraph 109 (Access to Financial Assurance), Paragraph 38 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Non-Settling Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.

“Owner Respondent” shall mean Superior Battery Inc.. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondent.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean Superior Battery Inc.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Morris Lithium Battery Fire Superfund Site, located at East Street and Benton Street (aka 900 East Benton Street and 747 East Street),

Parcel Number 05-03-406-003, Morris Township, Morris Federal Industrial Park LT 1 SEC 3-3-7, 41.362002 North Latitude and -88.411968 West Longitude in Morris, Grundy County, Illinois and depicted generally on the map attached as Appendix B.

“State” shall mean the State of Illinois.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); see also 35 I.A.C. § 721.102; and (d) any “hazardous substance” under 415 ILCS 5/3.215.

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

#### **IV. FINDINGS OF FACT**

9. The Site is located at the corner of East Street and Benton Street, Parcel Number 05-03-406-003 (aka 900 East Benton Street and 747 East Street) in Morris, Grundy County, Illinois. The Site is zoned as Industrial and consists of a warehouse situated in a residential and industrial area on the east side of the city of Morris (City). Residential homes surround the Site on the north, west, and south sides. The City owns the adjacent properties to the east.

10. According to Grundy County, Illinois records, Superior Battery Inc. (Superior) is the current owner of the Site. Superior purchased the Site on October 15, 2020. Superior was incorporated in Illinois on April 30, 2012 and is currently active and in good standing.

11. The on-Site warehouse is currently operated by Superior and/or Superior’s President, Mr. Jin Zheng. A large quantity of lead/acid batteries, nickel cadmium batteries, solar panels, other waste electronics, and roofing materials were reported to be stored in the warehouse, including approximately 200,000 pounds of lithium batteries.

12. On June 29, 2021, the Morris Fire Department (Fire Department), and numerous other fire departments from across northern Illinois, responded to a fire at the Site. At the request of the Fire Department, EPA mobilized to the Site the same day to respond to the incident. IEPA also responded to the emergency. The Fire Department issued a mandatory evacuation order for all residents within a 0.5-mile radius of the Site due to the threatened release of contaminants from the smoke plume which included particulates, metals, and volatile organics, and the by-products of lithium combustion such as lithium hydride and lithium hydroxide which are combustible, toxic, and corrosive. The evacuation order was lifted on July 2, 2021.



13. Because the contents of the building include lithium batteries, which are water reactive, the Fire Department initially made the decision to let the fire burn itself out. Water and firefighting foam can accelerate battery fires and cause environmental damage. After consulting with firefighting experts, the Fire Department implemented other strategies to put out the fire and control hot spots. The Fire Department ultimately applied Portland cement to control the fire; however, hot spots continued to burn for days after the initial fire.

14. EPA, IEPA, and the EPA Superfund Technical Assessment and Response Team (START) contractor responded to perform response activities and conduct 24-hour air monitoring and air and wipe sampling in the surrounding residential neighborhood.

15. During the fire, hazardous substances were potentially released through air emissions from the building which may have contaminated residential surfaces and soil through aerial deposition. Hazardous substances may also have been released from firefighting water runoff and rainwater.

16. On July 8, 2021, IEPA requested EPA to consider continued action at the Site, potentially in the form of a time-critical removal action.

17. On July 9, 2021, EPA and the Fire Department demolished a portion of the wall as an emergency measure to safely extinguish the hot spot that was present in that area.

18. Batteries, including the lithium-ion batteries, generally remain on-Site in containers or on pallets in burned and deteriorated condition. Some containers are leaking and there is a large amount of burned debris and ash throughout the inside of the warehouse. Lithium-ion batteries were observed broken open and with spilled contents after the fire. The batteries are stacked in unstable positions inside deteriorating boxes and on pallets near one another. These batteries are a safety and fire hazard because they contain a flammable electrolyte and may become pressurized when damaged, causing them to rupture. Rupture of the batteries may also cause short-circuiting. Short-circuiting a battery will cause the cell to overheat and possibly catch fire or explode. Adjacent cells may then overheat and fail, possibly causing the entire battery to ignite or rupture. In addition, the battery can explode or leak if heated, disassembled, shorted, recharged, or exposed to fire or high temperature.

19. Lithium batteries can react violently with water and catch fire, especially when damaged. The roof of the warehouse was damaged in the fire and leaks when it rains, which could reignite the lithium batteries remaining inside the warehouse. Remaining portions of the building appear to be structurally unsound and may collapse. EPA preliminarily estimates the presence of 100 pallets of lithium batteries, including approximately 50% that are still intact and at risk of further reactions. There is a potential for additional fires on-Site, and re-ignition of hot spots continues to be a concern. EPA has continued to monitor air quality and provide guidance and support to state and federal agencies, and to the Fire Department.

20. Hazardous substances, pollutants, and contaminants are present at the Site in fire debris and an estimated 200,000 lbs. of batteries in burned and deteriorated condition with some leaking or stacked in damaged containers in unstable positions. Based on information gathered during the emergency response, the battery types present at the Site include lithium-ion, lithium



metal, nickel cadmium (NiCad), nickel metal hydride (NiMh), and lead-acid batteries. Hazardous substances are also present in solar panels, inverters, and other electrical equipment. Specifically, the hazardous substances present at the Site may include the following:

- a) Lithium,
- b) Lead,
- c) Cadmium,
- d) Copper,
- e) Cobalt,
- f) Nickel,
- g) Potassium hydroxide,
- h) Sulfuric acid, and
- i) Manganese.

21. Given the conditions at the Site, the ongoing threat of spontaneous fire or explosions, the nature of the known and suspected hazardous substances at the Site, and the potential exposure pathways described in the Action Memorandum, attached as Appendix A, actual or threatened releases of hazardous substances, pollutants, and/or contaminants from this Site, if not addressed by implementing the response actions selected in the Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

22. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

- a) The Morris Lithium Battery Fire Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b) The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c) Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d) Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

23. Respondent was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

24. The conditions described in Paragraphs 1 through 21 of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. EPA determined in the Action Memorandum, that the Site conditions described in Paragraphs 1 through 21 the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

26. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VI. SETTLEMENT AGREEMENT AND ORDER**

27. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

## **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

28. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 3 days after the Effective Date. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 3 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor’s or subcontractor’s name, title, contact information, and qualifications within 3 days after EPA’s disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA’s review for verification based on objective assessment criteria (e.g., experience,

capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

29. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement: Ronald Schrack, President, Schrack Environmental Consultants, Inc., 24636 West Renwick Road, Plainfield, Illinois 60522, (630) 750-6291, schrackeci@yahoo.com. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 3 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to all Respondent.

30. EPA has designated Leonard Zintak of the Superfund and Emergency Management Division, Emergency Response Branch 2, Emergency Response Section 3, Region 5, as its On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to Paragraph 29, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 5 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

31. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **VIII. WORK TO BE PERFORMED**

32. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum and the emergency and time-critical removal actions that have either been completed or will continue. The actions to be implemented generally include, but are not limited to, the following:

- a) Develop and implement a Site-specific Health and Safety Plan, including an Air Monitoring Plan, and a Site Emergency Contingency Plan;
- b) Develop and implement a Site Security Plan;
- c) Develop and implement a Site-specific Work Plan to address the scope of work;
- d) Determine the structural integrity of the building and ensure that it is safe to perform work inside or adjacent to the building;
- e) Inventory and perform hazard characterization on all hazardous substances, including abandoned batteries;

- f) Perform sampling and analysis of waste, contaminated soil, burned material, asbestos (if observed), storm water (if needed), and air monitoring and sampling;
- g) Conduct assessments of the batteries, cathode ray tubes, computer boards, and other material to determine the cost-benefit of recycling versus disposal. Conduct recycling to the extent feasible;
- h) Consolidate and package hazardous substances, pollutants, and contaminants for transportation and off-Site disposal in accordance with EPA's procedures for planning off-Site response actions ("Off-Site Rule"), 40 C.F.R § 300.440;
- i) Package and ship all batteries in accordance with the Department of Transportation's general requirements for the shipment and packaging of lithium cells and batteries, 49 C.F.R § 173.185; and
- j) Take any other response actions to address any release or threatened release of a hazardous substance, pollutant, or contaminant that the OSC determines may pose an imminent and substantial endangerment to the public health or the environment.

33. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

#### **34. Work Plan and Implementation**

- a) Within 10 days after the Effective Date, in accordance with Paragraph 35 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 32 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.
- b) EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 5 days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.
- c) Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.
- d) Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

### 35. **Submission of Deliverables**

#### a) **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at Leonard Zintak, U.S. EPA, Region 5, 77 West Jackson Boulevard (SE-5J), Chicago, Illinois 60604, (312) 886-4246, [zintak.leonard@epa.gov](mailto:zintak.leonard@epa.gov). Respondent shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 35.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

#### b) **Technical Specifications for Deliverables**

(1) Sampling and monitoring data may be attached to an email sent directly to the OSC at [zintak.leonard@epa.gov](mailto:zintak.leonard@epa.gov) or shared in OneDrive. If a zip file is larger than 15 MB, Respondent should submit the data using digital media (physical disk) and shall direct the submission(s) required by this Settlement to the OSC at Leonard Zintak, U.S. EPA, Region 5, 77 West Jackson Boulevard (SE-5J), Chicago, Illinois 60604. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

36. **Health and Safety Plan.** Within 10 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

37. **Quality Assurance, Sampling, and Data Analysis**

a) Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b) **Sampling and Analysis Plan.** Within 10 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and relevant guidance and policy including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c) Respondent shall ensure that EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under



Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>).

d) However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e) Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA’s oversight of Respondent’s implementation of the Work.

f) Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

g) Respondent waives any objections to any data gathered, generated, or evaluated by EPA Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.



38. **Community Involvement Plan.** EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

39. **Post-Removal Site Control.** In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to: maintain adequate and appropriate fencing around the perimeter of the Site, Affected Properties, or other properties to be identified. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

40. **Progress Reports.** Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a weekly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

41. **Final Report.** Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 116 (notice of completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of the Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or

supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

#### **42. Off-Site Shipments**

a) Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b) Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility’s state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c) Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

d) In addition to the requirements of this Section, Respondent must comply with all requirements applicable to the shipment and packaging of lithium cells and batteries, including but not limited to the Department of Transportation’s general requirements for the shipment and packaging of lithium cells and batteries, 49 C.F.R. § 173.185.

### **IX. PROPERTY REQUIREMENTS**

43. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Settling Owner’s Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and the EPA, providing that such

Non-Settling Owner and Owner Respondent shall, with respect to Owner Respondent's Affected Property: (i) provide the EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 43.a) (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions listed in Paragraph 43.b) (Land, Water, or Other Resource Use Restrictions). Respondent shall provide a copy of such access and use restriction agreement(s) to EPA.

a) **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 87 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or their agents, consistent with Section X (Access to Information);
- (9) Assessing Respondent's compliance with the Settlement;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

b) **Land, Water, or Other Resource Use Restrictions.** Respondent shall implement required land, water, or other use restrictions that EPA determines are applicable to the Affected Property.

44. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through “best efforts” in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

45. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondent shall cooperate with EPA’s efforts to secure and ensure compliance with such institutional controls.

46. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

47. **Notice to Successors-in-Title**

a) Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent’s Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of that removal action; and (3) identify the name, docket number, and effective date of this Settlement. Owner Respondent shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b) Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

48. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## **X. ACCESS TO INFORMATION**

49. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Respondent’s possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **50. Privileged and Protected Claims**

a) Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 50.b), and except as provided in Paragraph 50.c).

b) If Respondent asserts such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent’s favor.

c) Respondent may make no claim of privilege or protection regarding:  
(1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

51. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify



all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

52. Notwithstanding any provision of this Settlement, EPA retain all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **XI. RECORD RETENTION**

53. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

54. At the conclusion of the document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 50 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

55. Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

## **XII. COMPLIANCE WITH OTHER LAWS**

56. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in

Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall include ARARs selected by EPA in the Removal Work Plan.

57. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

### **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

58. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (312) 353-2318 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

59. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (312) 353-2318, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

60. For any event covered under this Section, Respondent shall submit a written report to EPA within 3 days after the onset of such event, setting forth the action or event that



occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

#### **XIV. PAYMENT OF RESPONSE COSTS**

61. **Payments for Future Response Costs.** Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a) **Periodic Bills.** On a periodic basis, EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 63 (Contesting Future Response Costs), and in accordance with Paragraph 1.a (Payments for Past Response Costs). Respondent shall make the payment at <https://www.pay.gov> in accordance with the following instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number C5TN. Respondent shall send to EPA, in accordance with Paragraph 30, a notice of this payment including these references.

b) **Deposit of Future Response Costs Payments.** The total amount to be paid by Respondent pursuant to Paragraph 61.a) (Periodic Bills) shall be deposited by EPA in the Morris Lithium Battery Fire Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Morris Lithium Battery Fire Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

62. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest shall begin to accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

63. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 1 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute,

Respondent shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 1, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 1. If Respondent prevail concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 1. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondent's obligation to reimburse EPA for its Future Response Costs.

## **XV. DISPUTE RESOLUTION**

64. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

65. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 10 days after such action. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

66. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Emergency Response Branch level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

67. Except as provided in Paragraph 63 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 77, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

## **XVI. FORCE MAJEURE**

68. “Force Majeure” for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent’s contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent’s best efforts to fulfill the obligation. The requirement that Respondent exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards set forth in the Action Memorandum.

69. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA’s OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA’s designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 5, within 24 hours of when Respondent first knew that the event might cause a delay. Within 5 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 68 and whether Respondent has exercised their best efforts under Paragraph 68, EPA may, in its unreviewable discretion, excuse in writing Respondent’s failure to submit timely or complete notices under this Paragraph.

70. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force

majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

71. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 68 and 69. If Respondent carry this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

72. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

## **XVII. STIPULATED PENALTIES**

73. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 74.a) and 75 for failure to comply with the obligations specified in Paragraphs 74.b) and 75, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence include compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

### **74. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a) The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 74.b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$3,000/day for the	1st through 14th day
\$4,000/day for the	15th through 30th day
\$6,000/day for the	31st day and beyond

b) Obligations

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 63 (Contesting Future Response Costs).

(4) Compliance Milestones:

- (a) Designation of Respondent's Contractor
- (b) Designation of Respondent's Project Coordinator
- (c) Submission of Health and Safety Plan
- (d) Submission of Perimeter Air Monitoring and Sampling Plan
- (e) Submission of Emergency Contingency Plan
- (f) Submission of QAPP
- (g) Submission of the U.S. EPA-approved Removal Work Plan
- (h) Adherence to the U.S. EPA approved schedule in the removal Work Plan
- (i) Initiation of fieldwork as approved in the Plans
- (j) Submission of monthly Progress Reports

Completion of any necessary Post-Removal Site Controls

Access and Non-Interference in compliance with this Settlement

Payment of Past Response costs pursuant to Paragraph 1

Payment of Future Response costs pursuant to Paragraph 1

75. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 74.b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000/day for the	1st through 14th day
\$3,000/day for the	15th through 30th day
\$5,000/day for the	31st day and beyond

76. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$25,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 87 (Work Takeover) and 109 (Access to Financial Assurance).

77. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 34 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Emergency Response Branch level or higher, under Paragraph 66 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

78. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

79. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. Respondent shall make all payments and shall send notice of such payments in accordance with the procedures under Paragraph 61 (Payments for Future Response Costs). Respondent shall indicate in the comment field on the [www.pay.gov](http://www.pay.gov) payment form that the payment is for stipulated penalties.

80. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 77 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 79 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

81. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.



82. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 (Work Takeover).

83. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

### **XVIII. COVENANTS BY EPA**

84. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of their obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

### **XIX. RESERVATIONS OF RIGHTS BY EPA**

85. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

86. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a) liability for failure by Respondent to meet a requirement of this Settlement;

b) liability for costs not included within the definitions of Past Response Costs or Future Response Costs;



- c) liability for performance of response action other than the Work;
- d) criminal liability;
- e) liability for violations of federal or state law that occur during or after implementation of the Work;
- f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g) liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

#### **87. Work Takeover**

- a) In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in their performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 30 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.
- b) If, after expiration of the 3-day notice period specified in Paragraph 87.a, Respondent has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 87.b). Funding of Work Takeover costs is addressed under Paragraph 109 (Access to Financial Assurance).
- c) Respondent may invoke the procedures set forth in Paragraph 66 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 87.b). However, notwithstanding Respondent’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 87.b) until the earlier of (1) the date that Respondent remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 66 (Formal Dispute Resolution).
- d) Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XX. COVENANTS BY RESPONDENT**

88. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

- a) any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b) any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement;
- c) any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

89. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 86.a) (liability for failure to meet a requirement of the Settlement), 86.d) (criminal liability), or 86.e) (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

90. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

91. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

## **XXI. OTHER CLAIMS**

92. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by

Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

93. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

94. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XXII. EFFECT OF SETTLEMENT/CONTRIBUTION**

95. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

96. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work and Future Response Costs.

97. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

98. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

99. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

### **XXIII. INDEMNIFICATION**

100. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

101. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

102. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement by Respondent and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement by Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

### **XXIV. INSURANCE**

103. No later than 14 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability

insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$2 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Morris Lithium Battery Fire Site, Morris, Illinois and the EPA docket number for this action.

## **XXV. FINANCIAL ASSURANCE**

104. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$1 million. ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

- a) A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b) An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c) A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d) A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e) A demonstration by a Respondent that it meets the financial test criteria of Paragraph 106, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover]; or

f) A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 104.

105. Respondent shall, within 30 days after the Effective Date, obtain EPA’s approval of the form of Respondent’s financial assurance. Within 30 days of such approval, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Richard Hackley at 77 West Jackson Boulevard (MC-10J), Chicago, Illinois 60604, [hackley.richard@epa.gov](mailto:hackley.richard@epa.gov).

106. Respondent seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 104.e) or 104.f) must, within 30 days of the Effective Date:

a) Demonstrate that:

(1) the affected Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:



- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b) Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

107. Respondent providing financial assurance by means of a demonstration or guarantee under Paragraph 104.e) or 104.f) must also:

- a) Annually resubmit the documents described in Paragraph 106.b) within 90 days after the close of the affected Respondent's or guarantor's fiscal year;
- b) Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c) Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 106.b); EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

108. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent



shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph 110 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

#### **109. Access to Financial Assurance**

a) If EPA issues a notice of implementation of a Work Takeover under Paragraph 87.b), then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 109.d).

b) If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 109.d).

c) If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 87.b), either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 104.e) or 104.f), then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 15 days of such demand, pay the amount demanded as directed by EPA.

d) Any amounts required to be paid under this Paragraph 109 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Morris Lithium Battery Fire Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e) All EPA Work Takeover costs not paid under this Paragraph 109 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

110. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA and the State in accordance with Paragraph 105, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA, after a reasonable opportunity for review and comment by the State, will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Respondent may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 105.

111. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

## **XXVI. MODIFICATION**

112. The OSC may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

113. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 112.

114. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXVII. ADDITIONAL REMOVAL ACTION**

115. If EPA determines that additional removal actions not included in the Removal Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 34 (Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

## **XXVIII. NOTICE OF COMPLETION OF WORK**

116. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, land, water, or other resource use restrictions, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

## **XXIX. INTEGRATION/APPENDICES**

117. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

- a) Appendix A. Action Memorandum.
- b) Appendix B. Map of Site

## **XXX. EFFECTIVE DATE**

118. This Settlement shall be effective 5 days after the Settlement is signed by the Regional Administrator or his/her delegatee.

IT IS SO AGREED AND ORDERED:

Signature Page for Settlement Regarding Morris Lithium Battery Fire Superfund Site

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

September 9, 2021

Dated



Digitally signed by

Ballotti, Doug

Date: 2021.09.09

10:39:32 -05'00'


Douglas Ballotti, Director

Superfund & Emergency Management Division, Region 5

Signature Page for Settlement Regarding Morris Lithium Battery Fire Superfund Site

**FOR SUPERIOR BATTERY INC.**

9/2/2021  
Dated

  
Jin Zheng  
President  
Superior Battery Inc.  
722 East Street, Morris, Illinois 60450

MORRIS LITHIUM BATTERY FIRE SITE  
APPENDIX A

ACTION MEMORANDUM  
July 23, 2021





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

July 23, 2021

REPLY TO THE ATTENTION OF:  
S-6J

**MEMORANDUM**

**SUBJECT:** ACTION MEMORANDUM – Request for an Exemption from the \$2 Million and 12-month Statutory Limits, and for Emergency and Time-Critical funding for the Morris Lithium Battery Fire Site in Morris, Grundy County, Illinois (Site ID #C5TN)

**FROM:** Leonard Zintak, On-Scene Coordinator  
Emergency Response Branch 2

Verneta Simon, On-Scene Coordinator  
Emergency Response Branch 2

**THRU:** Samuel Borries, Chief  
Emergency Response Branch 2

**TO:** Douglas Ballotti, Director  
Superfund & Emergency Management Division

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document your approval for an exemption from the \$2 million and 12-month statutory limits, document prior verbal approval of \$50,000 in emergency funding from the Emergency Response Branch Chief, and to request and document your approval to expend up to \$3,582,869 to conduct a time-critical removal action at the Morris Lithium Battery Fire Site (the Site) in Morris, Grundy County, Illinois.

The ongoing emergency response actions and the time-critical response actions proposed herein are necessary to continue to mitigate threats to public health, welfare, and the environment posed by the presence of uncontrolled hazardous substances at the Site while operating in accordance with DOT regulations. The U.S. Environmental Protection Agency (EPA) documented the presence of hazardous substances at the Site, including toxic, corrosive, ignitable, and reactive waste streams, as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The emergency and time-critical removal actions that have either been completed or will continue include:

- Prepare site plans, including a Work Plan, Site-specific Health and Safety Plan (HASp), and Emergency Contingency Plan;
- Establish Site security and an incident command post;
- Inventory and perform hazard characterization on lithium batteries, solar panels, and other waste electronics, as well as drums and other items present at the Site;
- Perform sampling and analysis;
- Stabilize/contain, transport, recycle (as appropriate), and dispose off-Site any hazardous substances, pollutants, and contaminants at a CERCLA-approved disposal facility, in accordance with EPA's Off-Site Rule (40 CFR § 300.440); and
- Package, transport and dispose of all batteries in accordance with 49 CFR 173.185

Response actions will be conducted in accordance with Section 104(a)(1) of CERCLA, 42 U.S. Code (USC) § 9604(a)(1) and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR § 300.415, to abate or eliminate the immediate threat posed to public health and/or the environment by the hazardous substances at the Site. The uncontrolled conditions of the hazardous substances at the Site and the potential threats they present require that this action be classified as a time-critical removal action. EPA's actions will require an additional estimated eight months to complete once the necessary permits are obtained.

There are no nationally significant, or precedent-setting issues associated with the proposed response at this non-National Priority List (NPL) site.

## **II. SITE CONDITIONS AND BACKGROUND**

CERCLIS ID:

Site Name: Morris Lithium Battery Fire Site

Site Location: East and Benton Streets (PIN 05-03-406-003) Morris, IL 60450

Site ID: C5TN

State ID:

RCRA ID:

Category: Emergency Response and Time-Critical Removal Action

### **A. Site Description**

#### **1. Removal Site evaluation**

Superior Battery, Inc is located at the corner of East and Benton Streets (aka 900 E. Benton St and 747 East St) in Morris, Grundy County, Illinois. At approximately 12:00 pm on June 29<sup>th</sup>, Morris Fire Department responded to the fire at the Superior Battery Inc. building, which was formerly the old Federal Paper Board building and is now owned by Superior Battery Inc. A large quantity of lithium batteries, solar panels, and other waste electronics were stored in the Superior Battery building. Approximately 200,000 pounds of batteries including lithium

batteries are stored in the building. Because the contents of the building contained lithium batteries, the Morris Fire Department initially made the decision to let the fire burn itself out. Water and firefighting foam can accelerate the battery fires and cause environmental damage. The fire department consulted with firefighting experts and ultimately applied Portland cement to control the fire. The fire department has also used water to address “hot spots” that continued to burn for days after the initial fire.

### **Inventory of Superior Battery Building (July 2021)**

Based on a brief visual inspection during the emergency phase of the incident and observations made from off-Site, EPA contractors estimate the following quantities of batteries and E-waste on-site:

- 100,000 lbs. lithium batteries
- 50,000 lbs. damaged, defective, or recalled (DDR) lithium batteries
- 30,000 lbs. nickel cadmium (NiCad) batteries
- 10,000 lbs. nickel metal hydride (NiMh) batteries
- 80 55-gallon drums of damaged lead-acid batteries
- 20,000 gallons of runoff water
- 10 20-yd<sup>3</sup> rollofs of hazardous and non-hazardous debris
- Numerous pallets of e-waste such as solar panels and TVs

EPA determined the metals and other hazardous substances present in the battery types based on standard Material Safety Data Sheets (MSDS) available on the web. Battery contents are as follows:

- Standard commercial nickel cadmium batteries contain the following hazardous substances, by weight: cadmium (17%), nickel (25%) and potassium hydroxide (6.2 %). Based on the above estimated quantities, the estimated amount of hazardous substances in nickel cadmium batteries at the Site is approximately: 5,100 lbs. of cadmium, 7,500 lbs. of nickel and 1,860 lbs. of potassium hydroxide.
- Standard commercial lithium ion batteries contain the following hazardous substances, by weight: copper (15%), aluminum (10%), and lithium cobalt oxide (35%). Based on the above table, the estimated amount of hazardous substances in lithium ion batteries at the Site is approximately: 15,000 lbs. of copper, 10,000 lbs. of aluminum and 35,000 lbs. of lithium cobalt oxide (cobalt).
- Standard commercial lead acid batteries contain lead (70%) and sulfuric acid (about 30%).

### **Threat of fire and release of hazardous substances into the environment**

Lithium-ion and lithium metal type batteries are a safety and fire hazard because they contain a flammable electrolyte and may become pressurized when damaged, causing them to rupture. Rupture of the battery may also cause short-circuiting. Short-circuiting a battery will cause the cell to overheat and possibly catch fire and/or explode. Adjacent cells may then overheat and

fail, possibly causing the entire battery to ignite or rupture. In addition, the battery can explode or leak if heated, disassembled, shorted, recharged, exposed to fire or high temperature. The lithium batteries can react violently with water and catch fire especially when damaged.

During the emergency response, EPA and its contractors observed thousands of commercial size lithium-ion batteries piled in boxes indiscriminately, with no cover on their exposed terminals. Some of the batteries burned in the fire and some did not. EPA observed numerous cubic boxes filled with lithium-ion batteries which may have been damaged by the fire. The cubic yard boxes and pallets of batteries are piled up in an unstable manner to the extent that the lithium-ion batteries inside may get crushed and or short-circuited. In addition, lithium batteries are near boxes of NiCad and other types of batteries which also contain hazardous substances.

The threat of a spontaneous fire or explosion from an accidental short-circuit or rupture of a lithium-ion battery is high and will increase as the ambient temperatures increase, especially during the summer months. Such a fire can spread to the rest of the batteries and materials at the Site, including the NiCad, lithium-ion and lead acid batteries and electronic waste. A new fire could release toxic materials into the surrounding residential area through fugitive air emissions including lithium, lead, cadmium, copper, cobalt, nickel, aluminum, potassium hydroxide, and sulfuric acid. The metals may contaminate residential yards through aerial deposition and expose the resident through direct contact or ingestion.

## **2. Physical location**

The Site is at East and Benton Streets in Morris, Grundy County, Illinois. The PIN is 05-03-406-003 (aka 747 East St. or 919 Benton St.). It lies in a residential and industrial area on the east side of Morris. There are residential homes surrounding the Site on the north, west, and south sides. The industrial property is on the east side of the Site. The City of Morris owns the properties adjacent to the Site to the east.

The Site consists of a warehouse. The geographical coordinates for the Site are 41.362002 North Latitude and -88.411968 West Longitude.

EPA conducted an Environmental Justice (EJ) analysis for the Site (see Attachment I). Screening of the surrounding area used Region 5's EJ Screen Tool. Region 5 has reviewed environmental and demographic data for the area surrounding the Site and determined there is a low potential for EJ concerns at the Site.

## **3. Site characteristics**

The Site is comprised of a warehouse currently owned and operated by Superior Battery Inc. and/or Jin Zheng (President). It is unknown at this time what the purpose of the warehouse was (i.e. storage of used batteries, storage of saleable batteries, etc.). The warehouse at the Site did not have any utilities connected such as electricity, water, or natural gas prior to the fire.

Federal Paper Board Company was a previous owner/operator of the Site. City officials had believed the Site to be abandoned and were unaware that the facility was being used for storage until the fire. Based on the information available to date, no one has conducted response actions at the Site.

#### **4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant**

A release or threat of release of hazardous substances, pollutants, or contaminants is present at the Site. EPA confirmed the presence of hazardous substances as defined by Section 101(14) of CERCLA including lithium, lead, cadmium, nickel, potassium hydroxide and sulfuric acid. These substances are present in significant quantities at the Site.

The on-site batteries, including the lithium-ion batteries, are generally in containers or on pallets in burned and deteriorated condition. Some containers are leaking and there is a large amount of burned debris and ash throughout the inside of the building. Lithium-ion batteries were observed broken open and with spilled contents after the fire. The batteries are all stacked in unstable positions inside deteriorating boxes and on pallets near one another. As a result of the fire, there is soot and ash on most surfaces inside the building.

The lithium batteries are water reactive if damaged and rainfall could reignite these batteries inside the building. The roof of the building was damaged in the fire and leaks when it rains. Based on the following, there is a potential for additional fires on site:

- the burned and deteriorated condition of the thousands of lithium-ion and lithium type batteries in the building
- the water-reactive characteristics of the lithium batteries
- the unstable and deteriorated storage conditions
- the damaged and leaking building roof
- the lack of fire protection in the building.

A fire would result in the release of hazardous substances into the air. These air emissions could migrate to surrounding residential properties through aerial deposition. Residents may be exposed to these hazardous substances from inhalation during the fire and evacuations in nearby residential areas might be necessary.

#### **5. National Priorities List (NPL) status**

The Site is not on the NPL and is not expected to be scored for the NPL.

#### **6. Maps, pictures and other graphic representations**

This Action Memorandum includes a map (Attachment III).

## **B. Other Actions to Date**

### **1. Previous actions**

There were no previous response actions at the Site.

### **2. Current actions**

On June 29, 2021 at approximately 12:00 pm, Morris firefighters were called to a fire at the Site. At that time responders discovered that the Site was being used to store batteries including lithium batteries, which are water reactive. In addition to the challenges posed by the reactivity of lithium, byproducts of lithium combustion such as lithium hydride (LiH) and lithium hydroxide (LiOH) are combustible, toxic, and corrosive. A 0.5-mile mandatory evacuation area surrounding the Site was implemented by the responding fire departments. EPA, Illinois Environmental Protection Agency (IEPA), and the EPA Superfund Technical Assessment and Response Team (START) contractor responded on scene to oversee response activities and conduct 24-hour air monitoring and also air and wipe sampling in the neighborhood surrounding the Site. EPA's Emergency and Rapid Response Services (ERRS) contractor mobilized to the Site on July 7, 2021 to assist with support to the Morris Fire Department during the emergency firefighting phase of the incident. Once the emergency phase of the incident has ended, the performance of a time-critical removal action is necessary to abate imminent and substantial danger to the public health and welfare.

## **C. State and Local Authorities' Roles**

### **1. State and local actions to date**

The Morris Fire Chief served as the Incident Commander for the emergency phase of the incident. Numerous fire and police departments from across northern Illinois assisted in the response. During the fire at Superior Battery, residents within ½ mile were evacuated from June 29, 2021 until July 2, 2021. The Morris Fire Department extinguished the fire on July 10, 2021. Hot spots where the fires occurred are being monitored and could reignite if exposed to rainwater.

### **2. Potential for continued State/local response**

EPA will coordinate with the Morris Fire Department during the time-critical removal to address any battery flareups, fires, or reactions of the batteries during handling and packaging. After completion of the removal action, coordination with the Brownfields Program may take place.

## **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Site conditions present a threat to the public health or welfare, and the environment, and meet the criteria for a time-critical removal action as provided for in 40 C.F.R. §



300.415(b)(1), based on the factors set forth in Section 300.415(b)(2) of the NCP, 40 CFR 300.415(b)(2). These factors include, but are not limited to, the following:

**§ 300.415(b)(2)(i) - Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants**

Hazardous substances, pollutants, and contaminants are present at the Site in fire debris and an estimated 200,000 lbs. of batteries in burned and deteriorating condition with some leaking, stacked in damaged containers in unstable positions. Based on information gathered during the emergency response it is believed that battery types include lithium-ion, lithium metal, nickel cadmium (NiCad), nickel metal hydride (NiMh) and lead-acid batteries. Hazardous substances are also present in solar panels, inverters, other electrical equipment. Hazardous substances present include lithium, lead, cadmium, nickel, potassium hydroxide and sulfuric acid.

A potential exposure to the nearby residents still exists after the fire. During the fire, hazardous substances were potentially released through air emissions from the building which may have contaminated residential surfaces and soil through aerial deposition. Exposure to hazardous substances on contaminated surface and in contaminated soils may occur through ingestion, dermal, and inhalation. Hazardous substances may also be released from firefighting water runoff and rainwater. A more detailed discussion of each hazardous substance follows immediately below including the results of Agency for Toxic Substances and Disease Registry (ATSDR) studies and assessments.

**Lead:** Lead is present in the lead acid batteries and other materials at the Site. Lead can affect almost every organ and system in the body. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure in adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia.

Exposure to high lead levels can severely damage the brain and kidneys of adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High level exposure in men can damage the organs responsible for sperm production. The Department of Health and Human Services (DHHS) has determined that lead and lead compounds are reasonably anticipated to be human carcinogens and the EPA has determined that lead is a probable human carcinogen (ATSDR, CAS # 7439-92-1, August 2007).

**Cadmium:** Cadmium is present in the nickel cadmium (NiCad) batteries at the Site. Cadmium is a natural element in the earth's crust. It is usually found as a mineral, combined with other elements such as oxygen (cadmium oxide), chlorine (cadmium chloride), or sulfur (cadmium sulfate, cadmium sulfide). Breathing high levels of cadmium can severely damage the lungs. Eating food or drinking water with very high cadmium levels severely irritates the stomach, leading to vomiting and diarrhea.

Long-term exposure to lower levels of cadmium in air, food, or water leads to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile bones. The health effects in children are expected to be similar to effects seen in adults: kidney, lung, and bone damage depending on the route of exposure. The DHHS has determined that cadmium and cadmium compounds are known human carcinogens.

**Copper:** Copper is present in the lithium ion batteries and other electronics at the Site. Copper is a metal that occurs naturally throughout the environment, in rocks, soil, water, and air. Copper is an essential element in plants and animals (including humans), which means it is necessary for us to live. Therefore, plants and animals must absorb some copper from eating, drinking, and breathing. Copper is used to make many kinds of products like wire, plumbing pipes, batteries, computer circuit boards, and sheet metal.

Copper does not break down in the environment. Copper compounds however can break down and release free copper into the air, water, and foods. High levels of copper can be harmful. Breathing high levels of copper can cause irritation of the nose and throat. Ingesting high levels of copper can cause nausea, vomiting, and diarrhea. Very high doses of copper can cause damage to the liver and kidneys and can even cause death.

**Cobalt:** Cobalt is present in the lithium ion batteries at the Site. Cobalt is a naturally occurring element found in rocks, soil, water, plants, and animals. Cobalt compounds are used to make lithium ion batteries.

The general population is exposed to low levels of cobalt in air, water, and food. Cobalt has both beneficial and harmful effects on health. At low levels, it is part of vitamin B12, which is essential for good health. At high levels, it may harm the lungs and heart. This chemical has been found in at least 426 of 1,636 NPL sites identified by EPA.

**Nickel:** Nickel is present in the nickel cadmium batteries at the Site. Nickel is a naturally occurring element. Pure nickel is a hard, silvery-white metal used to make stainless steel and other metal alloys.

Skin effects are the most common effects of nickel exposure in people who are sensitive to nickel. Workers who breathe very large amounts of nickel compounds have developed chronic bronchitis and lung and nasal sinus cancers. Nickel has been found in at least 882 out of 1,636 NPL sites identified by EPA.

**Aluminum:** Aluminum is present in the lithium ion batteries at the Site. Everyone is exposed to low levels of aluminum from food, air, water, and soil. Exposure to high levels of aluminum may result in respiratory and neurological problems. Aluminum (in compounds combined with other elements) has been found in at least 596 out of 1,636 NPL sites identified by EPA.

**Potassium Hydroxide:** Potassium hydroxide is present as a liquid electrolyte in the nickel cadmium batteries at the Site. According to the material safety data sheet, potassium hydroxide is a strong alkaline corrosive that may cause severe burns to skin tissue if spilled. In addition, eye contact with potassium hydroxide may cause permanent blindness. Ingestion may cause damage

to the throat area. Finally, inhalation of mists will result in irritation to the nasal mucus membranes, and respiratory tract tissues.

**Sulfuric acid:** Sulfuric acid is present as a liquid electrolyte in the lead acid batteries at the Site. Contact with sulfuric acid will burn skin. Breathing sulfuric acid can result in tooth erosion and respiratory tract irritation. Drinking sulfuric acid will burn the mouth, throat and stomach and can result in death.

Sulfuric acid in the eyes will cause the eyes to water and burn. People who have breathed large quantities of sulfuric acid at work have shown an increase in cancers of the larynx. The International Agency for Research on Cancer (IARC) has determined that occupational exposure to strong inorganic acid mists containing sulfuric acid is carcinogenic to humans.

**Manganese:** Manganese is present as manganese oxide in lithium type batteries at the Site. Manganese is a naturally occurring metal found in many types of rocks. Pure manganese is silver in color but does not occur naturally. It combines with other substances such as oxygen, sulfur, or chlorine. Manganese occurs naturally in most foods and may be added to some foods.

The most common health problems to humans exposed to high levels of manganese involve the nervous system. These health effects include behavioral changes and other nervous system effects, which include movements that may become slow and clumsy. This combination of symptoms when sufficiently severe is referred to as “manganism”.

Other, less severe nervous system effects such as slowed hand movements have been observed in some workers exposed to lower manganese concentrations in the workplace. Exposure to high levels of manganese in air can cause lung irritation and reproductive effects. Nervous system and reproductive effects have been observed in animals after high oral doses of manganese.

**§ 300.415(b)(2)(iii) - Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release**

EPA and EPA contractors conducted fire watch inspections of the Site during the emergency phase. The inspections documented the following conditions at the Site including:

- Lithium-ion and lithium metal batteries have been damaged in the fire and have broken casings with their contents released (in cubic yard boxes).
- NiCad and NiMh batteries that may have been damaged in the fire are in deteriorated condition.
- Lead-acid batteries have been damaged in the fire and have leaked sulfuric acid onto the floor of the building.

#### **§ 300.415(b)(2)(vi) - Threat of fire or explosion**

Lithium batteries burned during the emergency phase of the incident. The lithium batteries can be water-reactive if exposed to rainwater or firefighting water. Extinguishing the lithium batteries, lithium-ion and lithium metal type batteries has been documented to be difficult and a safety and fire hazard because they contain a flammable electrolyte and may become pressurized when they are damaged causing them to rupture. The battery rupturing may also cause short-circuiting. Short-circuiting a battery will cause the cell to overheat and possibly to catch fire and/or explode. Adjacent cells may then overheat and fail, possibly causing the entire battery to ignite or rupture.

The Site building has no fire suppression system. Overheating and combustion of a few lithium-ion batteries can quickly spread to all the batteries at the Site, including those that were not damaged in the initial incident.

During the fire watch inspections, EPA and the Fire Department observed thousands of batteries including commercial size lithium-ion/lithium type batteries piled up in boxes indiscriminately with no cover on their exposed terminals. EPA found cubic boxes filled with lithium-ion batteries which may be damaged thereby posing a fire hazard. The containerized batteries are piled up in an unstable manner, to the extent that the lithium batteries may get crushed or short-circuit. In addition, lithium-ion and lithium type batteries are located next to boxes of NiCad, NiMh and other types of batteries which contain hazardous substances.

The threat of a spontaneous fire or explosion from an accidental short-circuit or rupture of a lithium-ion or lithium metal type battery is high and will increase as ambient temperatures rise and rain leaks into the building from the damaged roof. Such a fire can spread to other batteries and materials at the Site, including the NiCad, lithium-ion, lithium type, and lead acid batteries, as well as electronic waste. A fire could release the following materials into the surrounding residential area through fugitive air emissions: lead, cadmium, copper, cobalt, nickel, aluminum, potassium hydroxide, manganese, and sulfuric acid. The metals may contaminate residential yards through aerial deposition. Residents in the surrounding neighborhood could experience exposure to released hazardous substances through dermal contact, ingestion, and inhalation of contaminated particulates.

#### **§ 300.415(b)(2)(vii) - The availability of other appropriate federal or State response mechanisms to respond to the release**

On July 8, 2021 IEPA requested EPA assistance for cleanup of the Site. IEPA indicated it does not have the financial resources to immediately mitigate the Site's threat of release of hazardous substances. A copy of IEPA's request is attached.

#### **IV. EXEMPTION FROM STATUTORY LIMITS**

Section 104(c) of CERCLA limits a Federal response action to 12 months and \$2 million unless response actions meet emergency and/or consistency exemptions. Based on the Pipeline and

Hazardous Materials Safety Administration (PHMSA) packaging and shipping requirements, the total cost is expected to exceed \$2 million. See cost estimates in Section V and Attachment IV.

Additionally, applying for a Department of Transportation (DOT) emergency permit is necessary to transport the damaged lithium batteries. This permit may take as long as three months to acquire. In addition, special drums must be used for shipping the damaged lithium batteries under the DOT emergency permit, and they are produced to order. For the aforementioned reasons, the removal action may exceed the one-year statutory limit.

The large quantities of water reactive batteries and other hazardous substances found at the Site warrant application of the \$2 million and 12-month exemption.

The conditions present at the Site warrant an emergency exemption to the statutory limits based on the following factors:

**Emergency Exemption:**

**A. There is an immediate risk to public health or welfare or the environment;**

As noted above, threat of a spontaneous fire or explosion from an accidental short-circuit or rupture of a lithium-ion or lithium type battery is high and will continue as ambient temperatures remain high through the rest of summer. Such a fire can spread to the rest of the batteries and materials at the Site, including the NiCad, lithium-ion, lithium type, and lead acid batteries, as well as electronic waste. A major fire may release thousands of pounds of the following materials into the surrounding residential area through fugitive air emissions: lead, cadmium, copper, cobalt, nickel, aluminum, potassium hydroxide, manganese, and sulfuric acid. These metals may contaminate residential yards through aerial deposition. Considering the additional labor and packaging requirements in order to operate within DOT requirements and recommendations, it is likely that costs will well exceed the statutory limit of \$2 million.

As work to complete packaging and preparation of batteries on-Site occurs, it is necessary to apply for an exemption permit from DOT allow for shipping the damaged lithium batteries. We may not receive this permit prior to completing all other Site work. In this case transport of the damaged lithium batteries would have to wait until a permit is received, which could be beyond the statutory 12-month time frame.

**B. Continued response actions are immediately required to prevent, limit, or mitigate an emergency;**

As we continue to see rainfall and high ambient air temperatures during the summer, our continued response actions are essential to mitigate the imminent threat to human health from a potential of fire reoccurring on-site. Lithium-ion and lithium type batteries have been documented to be a safety and fire hazard because they contain a flammable electrolyte and may become pressurized when they are damaged causing them to rupture. The battery rupturing may also cause short-circuiting. Short-circuiting a battery will cause the cell to overheat and possibly to catch fire and/or explode. Adjacent cells may then overheat and fail, possibly causing the entire battery to ignite or rupture.

**C. Assistance will not otherwise be provided on a timely basis.**

Neither state nor local agencies have the resources to conduct this work. Without this removal action by EPA, hazard mitigation will not occur on a timely basis.

**V. ENDANGERMENT DETERMINATION**

Given Site conditions, the nature of the known and suspected hazardous substances on-Site, and the potential exposure pathways described in Sections II, III and IV above, actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response actions selected in this Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

**VI. PROPOSED ACTIONS**

**A. Proposed Actions**

**1. Proposed action description**

The response actions described in this memorandum directly address the actual or threatened release of hazardous substances, pollutants, or contaminants at the Site which may pose an imminent and substantial endangerment to public health or welfare or to the environment. These response actions do not impose a burden on affected property disproportionate to the extent to which that property contributes to the conditions being addressed.

The proposed emergency and time-critical removal actions that have either been initiated or will continue include:

1. Develop and implement a site-specific HASP, including an Air Monitoring Plan, and a Site Emergency Contingency Plan.
2. Develop and implement a Site Security Plan.
3. Develop and implement a Workplan to address the scope of work.
4. Removal of a portion of building wall to assist with emergency firefighting activities.
5. Inventory and perform hazard characterization on all hazardous substances, including abandoned batteries.
6. Perform sampling and analysis as needed.
7. Conduct assessments of the batteries, cathode ray tubes, computer boards and other material to determine the cost-benefit of recycling versus disposal. Conduct recycling to the extent feasible.



8. Consolidate and package hazardous substances, pollutants and contaminants for transportation and off-site disposal in accordance with the EPA Off-Site Rule, 40 CFR 300.440.
9. Package and ship all batteries in accordance with 49 CFR 173.185.
10. Take any other response actions to address any release or threatened release of a hazardous substance, pollutant or contaminant that the OSC determines may pose an imminent and substantial endangerment to the public health or the environment.

The OSC will conduct removal actions in a manner not inconsistent with the NCP. The OSC will initiate planning for provision of post-removal site control consistent with the provisions of NCP § 300.415(l).

The threats posed by uncontrolled substances considered hazardous meet the criteria listed in NCP § 300.415(b)(2), and the response actions proposed herein are consistent with any long-term remedial actions which may be required. Elimination of hazardous substances, pollutants and contaminants that pose a substantial threat of release is expected to minimize substantial requirements for post-removal Site controls.

#### Off-Site Rule

All hazardous substances, pollutants, or contaminants removed off-site pursuant to this removal action for treatment, storage, and disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 C.F.R. § 300.440.

#### **2. Contribution to remedial performance**

The proposed action should not impede future remedial performance.

#### **3. Engineering Evaluation/Cost Analysis (EE/CA)**

Not Applicable.

#### **4. Applicable or relevant and appropriate requirements (ARARs)**

All applicable, relevant, and appropriate requirements (ARARs) of Federal and State laws will be complied with to the extent practicable considering the exigencies of the circumstances. EPA has consulted IEPA on-site personnel asking for Illinois ARARs which may apply. A written request was sent on July 16, 2021.

EPA will consult with PHMSA regarding the packing requirement for lithium batteries.

## 5. Project Schedule

The time-critical removal actions will require an estimated eight months to complete after the necessary permits are received.

### B. Removal Project Ceiling Estimate – Extramural Costs:

The Independent Government Cost Estimate is presented in Attachment VI.

Estimated project costs are summarized below:

#### 1. Estimated costs

<u>Extramural Costs</u>	<u>Proposed Ceiling</u>
<u>Regional Removal Allowance</u> <u>Costs:</u>	
Total Cleanup Contractor Costs (This cost category includes estimates for ERRS and subcontractors)	<b>\$2,066,295</b>
<u>Other Extramural Costs Not</u> <u>Funded from the Regional</u> <u>Allowance:</u>	
Total START, including multiplier costs	<b>\$800,000</b>
<u>Subtotal</u>	
<b>Subtotal Extramural Costs</b>	<b>\$2,866,295</b>
Extramural Costs Contingency (25% of Subtotal, Extramural Costs rounded to nearest thousand for Proposed Increase)	<b>\$716,574</b>
<b>TOTAL REMOVAL ACTION PROJECT CEILING</b>	<b>\$3,582,869</b>

## **VII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

Given Site conditions, the threat of future fires, the nature of the hazardous substances and pollutants or contaminants documented on-Site, and the potential exposure pathways to nearby populations described in Section II, III, IV, and V, above, actual or threatened releases of hazardous substances and pollutants or contaminants from this Site, if not addressed by implementing the response actions selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment, increasing the potential that hazardous substances will be released and thereby threatening the adjacent population and the environment.

## **VIII. OUTSTANDING POLICY ISSUES**

None.

## **IX. ENFORCEMENT**

For administrative purposes, information concerning the enforcement strategy for this Site is contained in the Confidential Enforcement Addendum. Estimated EPA intramural costs are about \$120,000.

The total EPA costs of this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$6,652,204<sup>1</sup>.

$$(\$3,582,869 + \$120,000) + (79.65\% \times \$3,702,869) = \$6,652,204$$

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<sup>1</sup> Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of Site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States right to cost recovery.



**BCC PAGE HAS BEEN REDACTED**

**NOT RELEVANT TO SELECTION  
OF REMOVAL ACTION**

**ENFORCEMENT ADDENDUM  
HAS BEEN REDACTED – TWO PAGES**

**ENFORCEMENT CONFIDENTIAL  
NOT SUBJECT TO DISCOVERY  
FOIA EXEMPT**

**NOT RELEVANT TO SELECTION  
OF REMOVAL ACTION**



**ATTACHMENT I**

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REMOVAL ACTION**

**ENVIRONMENTAL JUSTICE ANALYSIS  
FOR  
MORRIS LITHIUM BATTERY SITE, MORRIS, GRUNDY COUNTY, ILLINOIS**

**July 2021**

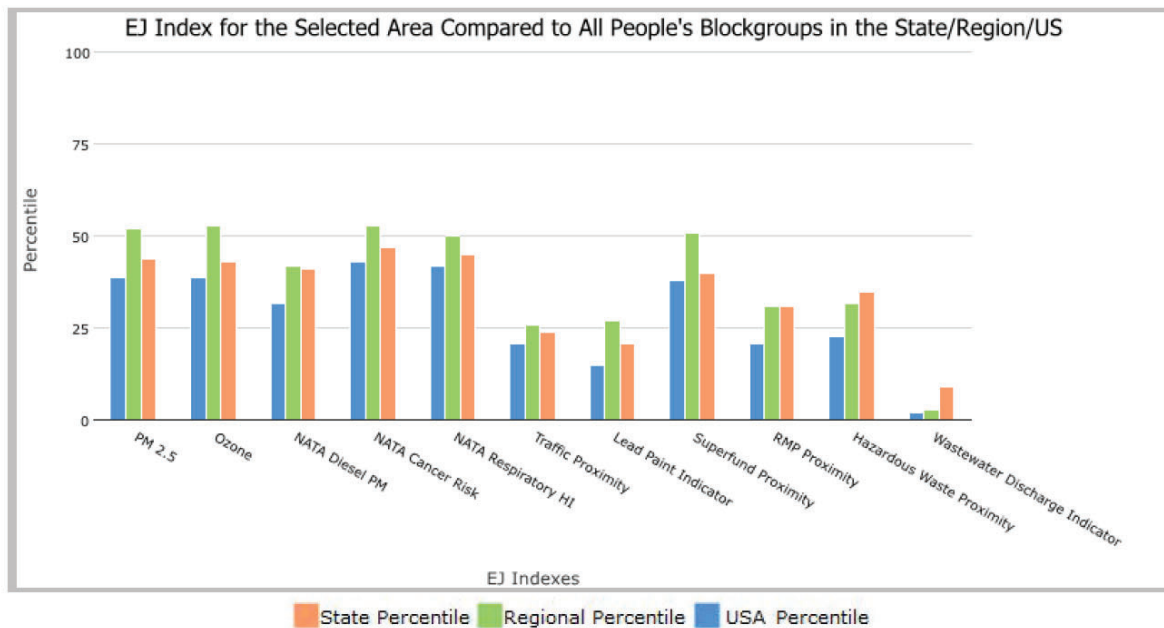
1 mile Ring Centered at 41.362638,-88.411993, ILLINOIS, EPA Region 5

Approximate Population: 5,278

Input Area (sq. miles): 3.14

Morris Lithium Batteries Fire

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
<b>EJ Indexes</b>			
EJ Index for PM2.5	44	52	39
EJ Index for Ozone	43	53	39
EJ Index for NATA* Diesel PM	41	42	32
EJ Index for NATA* Air Toxics Cancer Risk	47	53	43
EJ Index for NATA* Respiratory Hazard Index	45	50	42
EJ Index for Traffic Proximity and Volume	24	26	21
EJ Index for Lead Paint Indicator	21	27	15
EJ Index for Superfund Proximity	40	51	38
EJ Index for RMP Proximity	31	31	21
EJ Index for Hazardous Waste Proximity	35	32	23
EJ Index for Wastewater Discharge Indicator	9	3	2



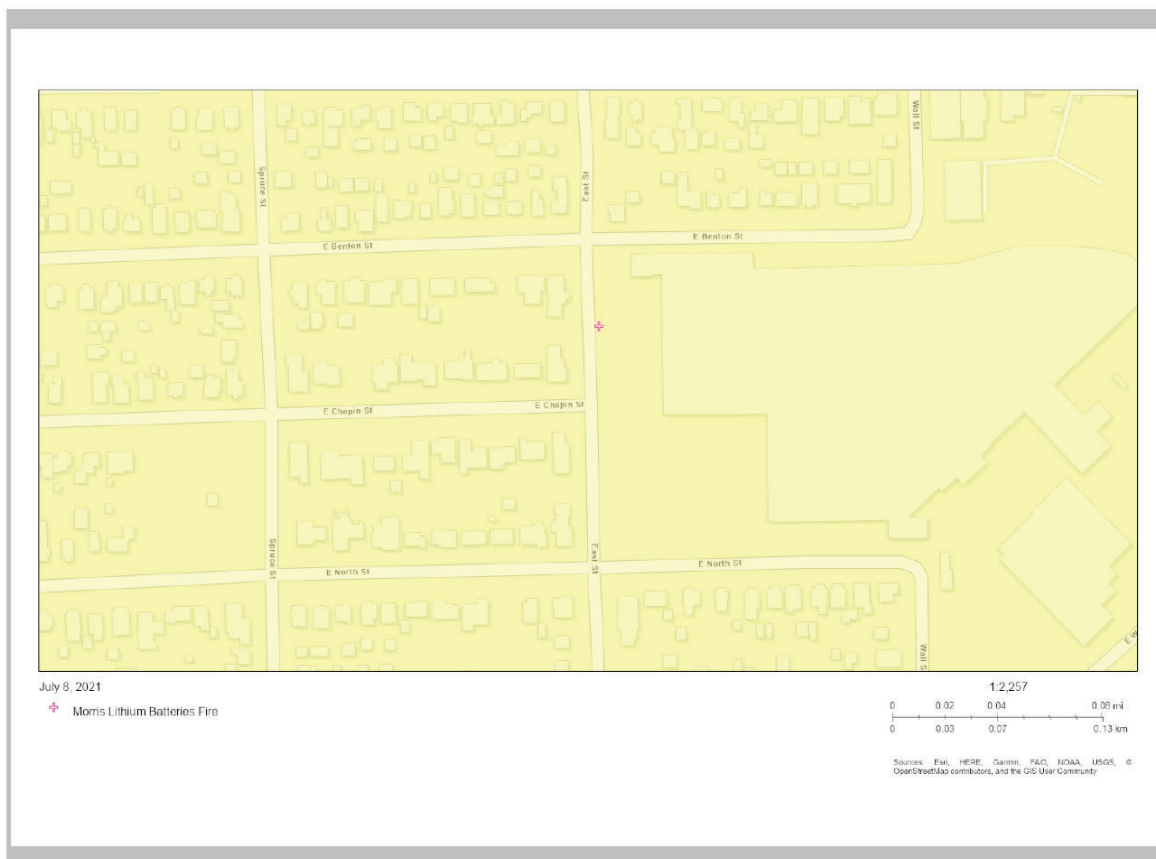
This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

1 mile Ring Centered at 41.362638,-88.411993, ILLINOIS, EPA Region 5

**Approximate Population: 5,278**

**Input Area (sq. miles): 3.14**

**Morris Lithium Batteries Fire**



Sites reporting to EPA	
Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	1



## EJSCREEN Report (Version 2020)



1 mile Ring Centered at 41.362638,-88.411993, ILLINOIS, EPA Region 5

Approximate Population: 5,278

Input Area (sq. miles): 3.14

Morris Lithium Batteries Fire

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
<b>Environmental Indicators</b>							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$ )	8.61	9.13	15	8.4	48	8.55	51
Ozone (ppb)	45.9	46.5	22	43.8	74	42.9	76
NATA* Diesel PM ( $\mu\text{g}/\text{m}^3$ )	0.44	0.67	34	0.446	50-60th	0.478	50-60th
NATA* Cancer Risk (lifetime risk per million)	25	33	16	26	<50th	32	<50th
NATA* Respiratory Hazard Index	0.34	0.42	28	0.34	50-60th	0.44	<50th
Traffic Proximity and Volume (daily traffic count/distance to road)	440	630	70	530	71	750	65
Lead Paint Indicator (% Pre-1960 Housing)	0.59	0.41	67	0.38	74	0.28	82
Superfund Proximity (site count/km distance)	0.046	0.096	42	0.13	38	0.13	39
RMP Proximity (facility count/km distance)	0.62	1.2	47	0.83	60	0.74	65
Hazardous Waste Proximity (facility count/km distance)	1.6	4.1	41	2.4	57	5	60
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	1.5	6.4	83	2.4	94	9.4	95
<b>Demographic Indicators</b>							
Demographic Index	20%	34%	35	28%	46	36%	30
People of Color Population	14%	38%	29	25%	49	39%	28
Low Income Population	25%	29%	50	30%	48	33%	44
Linguistically Isolated Population	1%	5%	51	2%	67	4%	52
Population With Less Than High School Education	9%	11%	55	10%	59	13%	50
Population Under 5 years of age	5%	6%	48	6%	48	6%	47
Population over 64 years of age	14%	15%	50	16%	44	15%	49

\* The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States. EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA analysis can be found at: <https://www.epa.gov/national-air-toxics-assessment>.

For additional information, see: [www.epa.gov/environmentaljustice](https://www.epa.gov/environmentaljustice)

## ATTACHMENT II

### U.S. ENVIRONMENTAL PROTECTION AGENCY REMOVAL ACTION

### ADMINISTRATIVE RECORD FOR THE MORRIS LITHIUM BATTERY FIRE SITE MORRIS, GRUNDY COUNTY, ILLINOIS

ORIGINAL  
JULY, 2021  
SEMS ID:

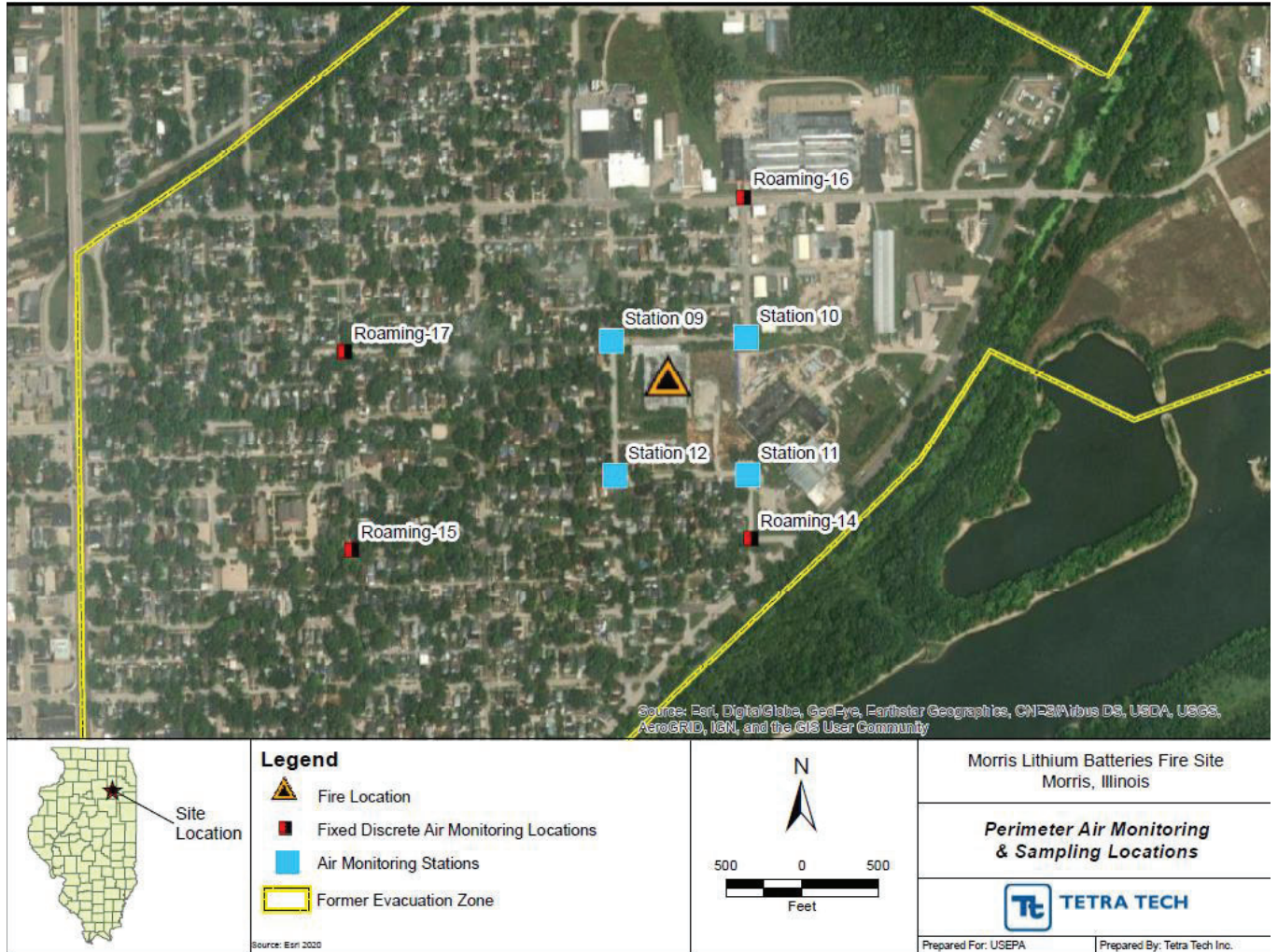
<u>NO.</u>	<u>SEMS ID</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	966418	6/15/21	Grundy County	-----	Property Record Card	2
2	966419	7/8/21	Willman, J., Illinois EPA	Ribordy, M., U.S. EPA	Referral Letter Request	2
3	966420	7/8/21	Zintak, L., U.S. EPA	Steffes, T., Morris Fire Protection and Ambulance District	E-mail re: Firefighter Support	1
4	967066	7/18/21	Zintak, L., U.S. EPA	Distribution List	Pollution Report - (Polrep) # 14	5
5	-----	-----	Zintak, L. and Simon, V., U.S. EPA	Borries, S. and Ballotti, D., U.S. EPA	Action Memorandum re: Request for an Exemption from the \$2 Million and 12-Month Statutory Limits, and for Emergency and Time-Critical Funding (Pending)	-----



## ATTACHMENT III

### U.S. ENVIRONMENTAL PROTECTION AGENCY REMOVAL ACTION

#### MORRIS LITHIUM BATTERY FIRE SITE MAP





**ATTACHMENT IV**

**DETAILED CLEANUP CONTRACTOR COST ESTIMATE**

**HAS BEEN REDACTED – ONE PAGE**

**NOT RELEVANT TO SELECTION**

**OF REMOVAL ACTION**

## ATTACHMENT V

### State of Illinois Gubernatorial Disaster Proclamation



## Gubernatorial Disaster Proclamation

WHEREAS, on the morning of June 29, 2021, a large industrial fire erupted at a battery storage facility located at 900 E. Benton Street, in Morris, Grundy County, Illinois; and

WHEREAS, nearly 100 tons of lithium batteries – an unprecedented amount – were stored at the site of the fire and provide a source of fuel for the fire; and

WHEREAS, the potentially hazardous nature of the smoke from the fire prompted local officials in the City of Morris to issue an evacuation order; and

WHEREAS, at my direction, personnel from the Illinois National Guard have been deployed to the scene of the fire to assist with the response; and

WHEREAS, the presence of lithium as a source of fuel for the fire has complicated the response to the fire, and creates a potential for flare-ups that may necessitate additional fire-fighting efforts; and

WHEREAS, to prepare for potential flare-ups, immediate disaster-related purchases are required, including for measures to contain runoff from any additional fire-fighting efforts; and

WHEREAS, reports received by the Illinois Emergency Management Agency indicate that local resources and capabilities have been exhausted and that state resources are needed to respond to and recover from the effects of this fire; and

WHEREAS, these circumstances give rise to an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from fire, and constitute a disaster as provided in Section 4 of the Illinois Emergency Management Agency Act; and,

WHEREAS, it is the policy of the State of Illinois that the State will be prepared to address any disasters and, therefore, it is necessary and appropriate to make additional State resources available to ensure that Illinoisans remain safe and secure; and,

WHEREAS, these conditions provide legal justification under section 7 of the Illinois Emergency Management Act for the issuance of a proclamation of disaster; and

WHEREAS, the Illinois Constitution, in Article V, Section 8, provides that “the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws,” and states, in the Preamble, that a central purpose of the Illinois Constitution is “provide for the health, safety, and welfare of the people”;

NOW, THEREFORE, in the interest of aiding the people of Illinois and the local governments responsible for ensuring public health and safety, I, JB Pritzker, Governor of the State of Illinois, hereby proclaim as follows:

Section 1: Pursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois and specifically declare Grundy

County as a disaster area. The proclamation authorizes the exercise of all of the emergency powers provided in Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, including but not limited to those specific emergency powers set forth below.

Section 2. The Illinois Emergency Management Agency is directed to activate the State Emergency Operations Plan and coordinate State resources to support local governments in disaster response and recovery operations.

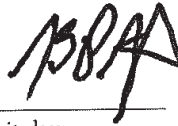
Section 3. To aid with emergency purchases necessary for response and other emergency powers as authorized by the Illinois Emergency Management Agency Act, the provisions of the Illinois Procurement Code that would in any way prevent, hinder or delay necessary action in coping with the disaster are suspended to the extent they are not required by federal law. If necessary, and in accordance with Section 7(1) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(1), the Governor may take appropriate executive action to suspend additional statutes, orders, rules, and regulations.

Section 4. Pursuant to Section 7(3) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(3), this proclamation activates the Governor's authority, as necessary, to transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating emergency response programs.

Section 5. All State agencies are directed to cooperate with the Governor, other State agencies and local authorities in the development and implementation of strategies and plans to respond to and recover from the impacts of the present disaster.

Section 6: This proclamation can facilitate a request for Federal disaster assistance if a complete and comprehensive assessment of damage indicates that effective recovery is beyond the capabilities of the State and affected local governments.

Section 7: This proclamation shall be effective immediately and remain in effect for 30 days.

A handwritten signature in black ink, appearing to read 'JB Pritzker', is written over a horizontal line.

JB Pritzker  
Governor

Date: July 2, 2021

**ATTACHMENT VI**

**INDEPENDENT GOVERNMENT COST ESTIMATE**

**HAS BEEN REDACTED – SIX PAGES**

**NOT RELEVANT TO SELECTION**

**OF REMOVAL ACTION**

MORRIS LITHIUM BATTERY FIRE SITE  
APPENDIX B

MAP OF SITE  
September 3, 2021



